INJURY TO EMPLOYEE—"RES IPSA LOQUITUR"—NEGLIGENCE.—1. Many accidents are mere casualties, for which no one is to blame. Others may have been caused by strangers, trespassers, by a fellow servant, by the defendant, or by the defendant and the plaintiff jointly. In this class of cases there is no presumption of negligence, and, even if negligence appear, there is no presumption as to who was guilty thereof.

2. There are cases where, in the absence of proof of any external cause, and the accident is of a kind which does not ordinarily occur without negligence, a jury may infer the want of due care from the mere happening of the occurrence. *Prima facie*, such negligence will be attributed to the person charged by law with the duty of maintaining and managing the thing causing the injury.

3. Where no explanation is given as to the cause of the fall of a brick arch, the maxim, *Res ipsa loquitur*, applies; and the jury may infer that there was negligence on the part of the owner, either in its original construction, or in its subsequent maintenance. *Chenall* v. *Palmer Brick Co.* (Ga.), 43 S. E. 443.

Per Lamar, J:

"It is rather remarkable that, out of the multitude of personal injury cases decided by this court, in no one of them has the maxim, *Res ipsa loquitur*, been directly invoked. *Yonge* v. *Kinney*, 28 Ga. 111. It is, however, so well founded in reason, and so sustained by authority, that it is not necessary to make any elaborate citation of authorities. The most apt and concise statement of the principle is found in the leading case, *Scott* v. *London & St. Katherine Docks Co.*, 3 Hurl. & C. 596, where the plaintiff was injured by the fall of bags of sugar being lowered from defendant's warehouse, and the court held, 'There must be reasonable evidence of negligence, but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as, in the ordinary course of things, does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by defendant, that the accident arose from want of care.' A case somewhat more directly in point is that of *Waterhouse* v. *Brewing Company* (S. D.), 81 N. W. 725, 48 L. R. A. 157, 159, where the building had stood for ten years, and the defendant insisted that that fact contradicted the charge that the building was negligently constructed. The court, however, said 'From the fact that the building fell of its own weight, without any external violence, a fair presumption would be that the fall occurred through adequate causes, one of the most natural of which would be the negligent and faulty construction of the building itself.'"

To the same effect are *Morris* v. *Strobel &c. Co.*, 81 Hun, 1; *Dohn* v. *Dawson*, 84 Hun, 110; *Mulcairns* v. *City of Janesville*, 67 Wis. 24; *Peer* v. *Ryan*, 54 Mich, 224; *Cleveland &c. R. Co.* v. *Walrath*, 6 Ohio Dec. 718; *Dixon* v. *Pluns*, 98 Cal. 334, 35 Am. St. R. 180, 20 L. R. A. 198.

See further, on the subject of the doctrine of *res ipsa loquitur*, *ante* p. 342.

CONTEMPT—NEWSPAPERS—PUBLICATION OF EVIDENCE.—Under the Bill of Rights of the State of Texas, guaranteeing freedom of speech and the liberty of the press, the court cannot prohibit the publication of the evidence, where it is

given in the course of a public trial upon a charge involving no question of obscenity. *Ex parte Foster* (Tex.), 71 S. W. 593.

Per Henderson, J:

"We have given this subject that careful examination commensurate with its importance, mindful that, on the one hand, the dignity and authority of the courts must be maintained, while, on the other, free speech, a free press, and the liberty of the citizen must be preserved. Both are equally valuable rights. If the court is shorn of its power to punish for contempts in all proper cases, it cannot preserve its authority, so that, without any constitutional or statutory guaranty, this power is inherent in the court. But the constitution itself, in our bill of rights, guaranties free speech and the liberty of the press. Of course, it was never intended, under the guise of these constitutional guaranties, that the power of the court should be trenched upon. Indeed, under our system of government, it was wisely intended that the authority of the court should be safeguarded and preserved, in order that all constitutional guaranties might be upheld for the safety and protection of the liberty of the citizen. We have examined a number of text-books, and in some we find it stated in general terms that the court may prohibit the publication of testimony in certain cases, but that the publication must have a tendency to embarrass, impede, or obstruct the administration of justice, and the case must be pending at the time of the publication. Rap. Contempts, sec 57; 7 Am. & Eng. Enc. Law (2d Ed.) p. 60, subd. 3. And the following cases are referred to in support of this proposition: *Tenney's Case*, 23 N. H. 162; *Sturoc's Case*, 48 N. H. 428, 97 Am. Dec. 630; *U. S.* v. *Holmes*, 1 Wall. Jr. 1, Fed. Cas. No. 15,383; *State* v. *Galloway*, 5 Cold. 326, 98 Am. Dec. 404; *Dunham* v. *State*, 6 Clark, 245; *Shortridge's Case*, 99 Cal. 526, 34 Pac. 227, 21 L. R. A. 755, 37 Am. St. Rep. 78; *State* v. *Morrill*, 16 Ark. 384; *Rex* v. *Clement*, 4 Barn. & Ald. 218.

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"If the constitution guaranties a public trial, is it in the power of the court to make it a private trial? If not, then where is the power of the court to prohibit spectators, or to require or enforce thereafter silence on those who may witness and hear the proceedings? If there is no power on the part of the court to prevent spectators from rehearsing evidence, by the same logic the court has no authority to prevent a publication of the testimony. Our constitution is but in accord with the genius and spirit of our free institutions, which is intended to guaranty publicity to the proceedings of our courts, and the greatest freedom in the discussion of the doings of such tribunals, consistent with truth and decency. And as has been well said, 'When it is claimed that this right has in any manner been abridged, such claim must find its support, if any there be, in some limitation expressly imposed by the lawmaking power.' And this imposition must be in accord with the provisions of our constitution guarantying the publicity of all trials, as well as the freedom of speech and of the press. We take it that the learned judge who exercised his authority in this instance did it, as he believed, in the interest of the due administration of the law; but the argument of convenience can have no weight as against those safeguards of the constitution which were intended by our fathers for the preservation of the rights and liberties of the citizen. And even if there was a conflict here between the authority and dignity of the court, that should yield to the plain letter of the constitution. We accordingly hold that the court had no power to prohibit the publication of the testimony of the witnesses in the case, and that his act in punishing the relator for contempt for violating that order was without jurisdiction, and was consequently void."